

**CIVIL JURY INSTRUCTIONS**  
**(BEFORE CLOSING ARGUMENTS)**

Members of the jury: You have heard the evidence. Now I will instruct you on the law, and next you will hear the final arguments of counsel. The Court and the jury have separate functions: you decide the disputed facts, and the Court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law or to apply your own concept of what you think the law should be.

**Burden of Proof**

The person who claims that certain facts exist must prove them by a greater weight of the evidence. This duty is known as the burden of proof. The burden of proof here is on Plaintiff to prove the facts necessary for his claim by the greater weight of the evidence.

**Greater Weight of the Evidence**

The greater weight of the evidence is that evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. This means the evidence is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity or the greater number of witnesses. In determining whether an issue has been proved by a greater weight of the evidence, you should consider all the evidence, regardless of who produced it.

If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the greater weight, the party who has the burden of proof has not established such issue by the greater weight of the evidence.

### **Evidence**

Evidence is all the testimony received from the witnesses, including depositions; any exhibits admitted during the trial; any facts agreed to by counsel (stipulations); and any facts that the Court requires you to accept as true.

Evidence may be direct or circumstantial, or both.

### **Direct Evidence**

Direct evidence is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence during the trial.

### **Circumstantial Evidence**

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. “Circumstantial evidence” is the proof of facts by direct evidence from which you may infer other reasonable facts or conclusions.

If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You may infer a fact or facts only from other facts that have been proven by the greater weight of the evidence. You may not make one inference from another inference, but you may draw more than one inference from the same facts or circumstances. Direct evidence and circumstantial evidence are of equal weight.

### **Matters Not Evidence**

Evidence does not include the pleadings or any statement of counsel made during the trial, unless such statement was an admission or stipulation as to certain facts. The opening statements and the closing arguments of counsel are designed to assist you; they are not evidence.

Statements or answers ordered stricken, or to which the Court sustained an objection, or that you were instructed to disregard are not evidence and must be treated as though you never heard them.

You must not guess why the Court sustained the objection to any question or what the answer to such question might have been. You must not consider as evidence any suggestion included in a question that was not answered.

## **Credibility**

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. To weigh the evidence, you must consider the credibility or believability of the witnesses. You will use the tests of truthfulness that you use in your daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which he or she testified; his or her accuracy of memory; frankness or lack of it; intelligence; interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Use these tests and assign to each witness' testimony such weight as you think proper.

You are not required to believe the testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your duty to determine what testimony to believe and what testimony not to believe.

Some guides for evaluating the testimony include:

- Was the witness able to clearly see or hear the events?
- How good was the witness' memory?
- Was there anything that may have interfered with the witness' ability to perceive or remember the events?
- How did the witness act while testifying?
- Did the witness have any relationship to either party, or anything to gain or lose from the case, that might influence his/her testimony?
- Was the testimony supported or contradicted by other evidence that you found believable?
- Was the testimony consistent with prior sworn statements?

## **Depositions**

Some testimony was presented by way of deposition transcript. This evidence is to be considered according to the same tests that are applied to other witnesses.

Also, if statements from a deposition or an affidavit differ from testimony given by the same witness in the courtroom, you may consider the difference to test the credibility of that witness.

## **Exhibits**

A number of exhibits and testimony relating to them have been introduced. You will determine what weight, if any, the exhibits should receive in light of all the evidence, no matter who produced the exhibit. The numbering or lettering of the exhibits that you take to the jury room may not follow consecutively. There are several reasons for this. Some exhibits may not have been offered, some may be duplicates, or the Court may have rejected the exhibit because of a legal or other ruling. Do not guess or draw any inference because you do not have a particular numbered exhibit.

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